IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7183 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH GOVINDBHAI HERMA

Versus

ASSISTANT COMMISSIONER

Appearance:

1. Special Civil Application No. 7183 of 2004

MR SANDEEP N BHATT for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 29/06/2004

ORAL JUDGEMENT

Rule. Learned advocate Mr.P.J.Mehta, who is given an advance copy of the petition, waives service of notice of rule on behalf of the respondents.

2. In the present petition, the petitioner is challenging the order dated 21.11.2003 passed by the respondent No.1 in exercise of power under section 7-A of the Employees Provident Fund and Miscellaneous Provisions of the Act, 1952 ("the said Act" for short). It is the case of the petitioner that he is not required to pay any amount as his establishment is not covered under the provisions of the said Act. Despite this position, according to the advocate for the petitioner, respondent No.1 has issued the order dated 21.11.2003 and has also issued recovery certificate dated 15.4.2004 pursuant to the said order dated 21.11.2003.

3. Learned advocate Shri P.J.Mehta for the respondents submits that the order is appealable under the provisions of section 7-I of the said Act and the petitioner has not filed any such appeal. He also submits that the petitioner has not participated during the proceedings and that therefore also the petition should be dismissed. The petitioner, however, has stated in the petition that the petitioner had already given detailed explanation in the year 1995 and was under an impression that no further proceedings would survive.

4. Considering the submissions made before me, I am of the opinion that the petitioner is required to be given one more chance to appear before the respondent authority to explain his case and to participate in the proceedings under the Act. For the said purpose, I quash and set aside the impugned order dated 21.11.2003 and remand the matter to the respondent No.1 for fresh consideration after hearing the petitioner. Since the order dated 21.11.2003 is set aside, question of recovery by the order dated 15.4.2004 also would not survive.

5. I find that the petitioner had also contributed to the impugned order being passed ex-parte and that therefore, the petitioner should be put to terms for granting request for remand. Accordingly, I provide that the petitioner shall deposit 25 per cent of the amount demanded from him and the petitioner will pay cost of Rs.5,000/- (Rupees five thousand only) to the respondents. The above directions are conditional upon the petitioner depositing the aforesaid amounts with the respondent authorities within a period of one month from today.

6. In view of the above directions, the petition stands disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(vjn)